

HOUSE _____ AMENDMENT NO. ____

Offered By

AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill Nos. 930 & 947, Section 305.230, Page 41, Line 86, by inserting after all of said line the following:

"385.400. Sections 385.400 to 385.436 shall be known and may be cited as the "Missouri Vehicle Protection Product Act".

385.403. As used in sections 385.400 to 385.436, the following terms shall mean:

(1) "Administrator", a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties;

(2) "Department", the department of insurance, financial institutions and professional registration;

(3) "Director", the director of the department of insurance, financial institutions, and professional registration;

(4) "Incidental costs", expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty.

Incidental costs may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees;

(5) "Premium", the consideration paid to an insurer for a reimbursement insurance policy;

(6) "Service contract", a contract or agreement for a separately stated consideration or for

Action Taken _____

Date _____

a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements;

(7) "Vehicle protection product", a vehicle protection device, system, or service that:

(a) Is installed on or applied to a vehicle;

(b) Is designed to prevent loss or damage to a vehicle from a specific cause; and

(c) Includes a written warranty.

For purposes of sections 385.400 to 385.436, the term "vehicle protection product" shall include, without limitation, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices;

(8) "Vehicle protection product warranty" or "warranty", a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, then the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty. Incidental costs may be reimbursed under the provisions of the warranty in either a fixed amount specified in the warranty or sales agreement or by the use of a formula itemizing specific incidental costs incurred by the warranty holder;

(9) "Vehicle protection product warrantor" or "warrantor", a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement. "Warrantor" does not include an authorized insurer providing a warranty reimbursement insurance policy;

(10) "Warranty holder", the person who purchases a vehicle protection product or who is a permitted transferee;

(11) "Warranty reimbursement insurance policy", a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on

Action Taken _____

Date _____

1 behalf of the warrantor all covered contractual obligations incurred by the warrantor under the
2 terms and conditions of the insured vehicle protection product warranties sold by the warrantor.

3 385.406. 1. No vehicle protection product may be sold or offered for sale in this state
4 unless the seller, warrantor, and administrator, if any, comply with the provisions of sections
5 385.400 to 385.436.

6 2. Vehicle protection product warrantors and related vehicle protection product sellers and
7 warranty administrators complying with sections 385.400 to 385.436 are not required to comply
8 with and are not subject to any other provisions of the state insurance code.

9 3. Service contract providers who do not sell vehicle protection products are not subject to
10 the requirements of sections 385.400 to 385.436 and sales of vehicle protection products are
11 exempt from the requirements of sections 385.200 to 385.220.

12 4. Warranties, indemnity agreements, and guarantees that are not provided as a part of a
13 vehicle protection product are not subject to the provisions of sections 385.400 to 385.436.

14 5. Notwithstanding the provisions of sections 408.140 and 408.233, RSMo, a business
15 which is licensed and regulated under sections 367.100 to 367.215 or sections 367.500 to 367.533,
16 RSMo, may offer and sell service contracts, as defined in sections 385.200, 385.300, and 385.403,
17 in conjunction with other transactions so long as such business complies with all other
18 requirements of chapter 385.

19 385.409. 1. A person may not operate as a warrantor or represent to the public that the
20 person is a warrantor unless the person is registered with the department on a form prescribed by
21 the director.

22 2. Warrantor registration records shall be filed annually and shall be updated within thirty
23 days of any change. The registration records shall contain the following information:

24 (1) The warrantor's name, any fictitious names under which the warrantor does business in
25 the state, principal office address, and telephone number;

26 (2) The name and address of the warrantor's agent for service of process in the state if
27 other than the warrantor;

28 (3) The names of the warrantor's executive officer or officers directly responsible for the
29 warrantor's vehicle protection product business;

Action Taken _____

Date _____

1 (4) The name, address, and telephone number of any administrators designated by the
2 warrantor to be responsible for the administration of vehicle protection product warranties in this
3 state;

4 (5) A copy of the warranty reimbursement insurance policy or policies or other financial
5 information required by section 385.412;

6 (6) A copy of each warranty the warrantor proposes to use in this state; and

7 (7) A statement indicating under which provision of section 385.412 the warrantor
8 qualifies to do business in this state as a warrantor.

9 3. The director may charge each registrant a reasonable fee to offset the cost of processing
10 the registration and maintaining the records in an amount not to exceed five hundred dollars
11 annually or as set by regulation. The information in subdivisions (1) and (2) of subsection 2 of
12 this section shall be made available to the public.

13 4. If a registrant fails to register by the renewal deadline, the director shall give him or her
14 written notice of the failure and the registrant will have thirty days to complete the renewal of his
15 or her registration before he or she is suspended from being registered in this state.

16 5. An administrator or person who sells or solicits a sale of a vehicle protection product
17 but who is not a warrantor shall not be required to register as a warrantor or be licensed under the
18 insurance laws of this state to sell vehicle protection products.

19 385.412. No vehicle protection product shall be sold or offered for sale in this state unless
20 the warrantor conforms to either subdivision (1) or (2) of this section in order to ensure adequate
21 performance under the warranty. No other financial security requirements or financial standards
22 for warrantors shall be required. The vehicle protection product's warrantor may meet the
23 requirements of this section by:

24 (1) Obtaining a warranty reimbursement insurance policy issued by an insurer authorized
25 to do business within this state which provides that the insurer will pay to, or on behalf of, the
26 warrantor one hundred percent of all sums that the warrantor is legally obligated to pay according
27 to the warrantor's contractual obligations under the warrantor's vehicle protection product
28 warranty. The warrantor shall file a true and correct copy of the warranty reimbursement
29 insurance policy with the director. The policy shall contain the provisions required in section

Action Taken _____

Date _____

1 385.415; or

2 (2) Maintaining a net worth or stockholder's equity of fifty million dollars. The warrantor
3 shall provide the director with a copy of the warrantor's or warrantor's parent company's most
4 recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the
5 last calendar year, or if the warrantor does not file with the Securities and Exchange Commission,
6 a copy of the warrantor or the warrantor's parent company's audited financial statements that
7 shows a net worth of the warrantor or its parent company of at least fifty million dollars. If the
8 warrantor's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to
9 meet the warrantor's financial stability requirement, then the parent company shall agree to
10 guarantee the obligations of the warrantor relating to warranties issued by the warrantor in this
11 state. The financial information filed under this subdivision shall be confidential as a trade secret
12 of the entity filing the information and not subject to public disclosure if the entity is not required
13 to file with the Securities and Exchange Commission.

14 385.415. No warranty reimbursement insurance policy shall be issued, sold, or offered for
15 sale in this state unless the policy meets the following conditions:

16 (1) The policy states that the issuer of the policy will reimburse or pay on behalf of the
17 vehicle protection product warrantor all covered sums which the warrantor is legally obligated to
18 pay or will provide that all service that the warrantor is legally obligated to perform according to
19 the warrantor's contractual obligations under the provisions of the insured warranties sold by the
20 warrantor;

21 (2) The policy states that in the event payment due under the terms of the warranty is not
22 provided by the warrantor within sixty days after proof of loss has been filed according to the
23 terms of the warranty by the warranty holder, the warranty holder may file directly with the
24 warranty reimbursement insurance company for reimbursement;

25 (3) The policy provides that a warranty reimbursement insurance company that insures a
26 warranty shall be deemed to have received payment of the premium if the warranty holder paid for
27 the vehicle protection product and insurer's liability under the policy shall not be reduced or
28 relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the
29 insurer; and

Action Taken _____

Date _____

1 (4) The policy has the following provisions regarding cancellation of the policy:

2 (a) The issuer of a reimbursement insurance policy shall not cancel such policy until a
3 notice of cancellation in writing has been mailed or delivered to the director and each insured
4 warrantor sixty days prior to cancellation of the policy;

5 (b) The cancellation of a reimbursement insurance policy shall not reduce the issuer's
6 responsibility for vehicle protection products sold prior to the date of cancellation; and

7 (c) In the event an insurer cancels a policy that a warrantor has filed with the director, the
8 warrantor shall do either of the following:

9 a. File a copy of a new policy with the director, before the termination of the prior policy;

10 or

11 b. Discontinue offering warranties as of the termination date of the policy until a new
12 policy becomes effective and is accepted by the director.

13 385.418. 1. Every vehicle protection product warranty shall be written in clear,
14 understandable language and shall be printed or typed in an easy-to-read point size and font and
15 shall not be issued, sold, or offered for sale in the state unless the warranty:

16 (1) States that the obligations of the warrantor to the warranty holder are guaranteed under
17 a warranty reimbursement insurance policy if the warrantor elects to meet its financial
18 responsibility obligations under subdivision (1) of section 385.412, or states the obligations of the
19 warrantor under this warranty are backed by the full faith and credit of the warrantor if the
20 warrantor elects to meet its financial responsibility under subdivision (2) of section 385.412;

21 (2) States that in the event a warranty holder must make a claim against a party other than
22 the warrantor, the warranty holder is entitled to make a direct claim against the warranty
23 reimbursement insurer upon the failure of the warrantor to pay any claim or meet any obligation
24 under the terms of the warranty within sixty days after proof of loss has been filed with the
25 warrantor, if the warrantor elects to meet its financial responsibility obligations under subdivision
26 (1) of section 385.412;

27 (3) States the name and address of the insurer of the warranty reimbursement insurance
28 policy, and this information need not be preprinted on the warranty form but may be stamped on
29 the warranty, if the warrantor elects to meet its financial responsibility obligations under

Action Taken _____

Date _____

subdivision (1) of section 385.412;

(4) Identifies the warrantor, the seller, and the warranty holder;

(5) Sets forth the total purchase price of the vehicle protection product warranty and the terms under which it is to be paid; however, the purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale;

(6) Sets forth the procedure for making a claim, including a telephone number;

(7) States the existence of a deductible amount, if any;

(8) Specifies the payments or performance to be provided under the warranty including payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions, or exclusions;

(9) Sets forth all of the obligations and duties of the warranty holder such as the duty to protect against further damage to the vehicle, the obligation to notify the warrantor in advance of any repair, or other similar requirements, if any;

(10) Sets forth any terms, restrictions, or conditions governing transferability of the warranty, if any; and

(11) Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance".

2. At the time of sale, the seller or warrantor shall provide to the purchaser:

(1) A copy of the vehicle protection product warranty; or

(2) A receipt or other written evidence of the purchase of the vehicle protection product and a copy of the warranty within thirty days of the date of purchase.

385.421. 1. No vehicle protection product may be sold or offered for sale in this state unless the vehicle protection product warranty states the terms and conditions governing the cancellation of the sale and warranty, if any.

2. The warrantor may only cancel the warranty if the warranty holder does any of the following:

(1) Fails to pay for the vehicle protection product;

(2) Makes a material misrepresentation to the seller or warrantor;

Action Taken _____

Date _____

1 (3) Commits fraud; or

2 (4) Substantially breaches the warranty holder's duties under the warranty.

3 3. A warrantor canceling a warranty shall mail written notice of cancellation to the
4 warranty holder at the last known address of the warranty holder in the warrantor's records at least
5 thirty days prior to the effective date of the cancellation. The notice shall state the effective date
6 of the cancellation and the reason for the cancellation.

7 385.424. 1. Unless licensed as an insurance company, a vehicle protection product
8 warrantor shall not use in its name, contracts, or literature the words "insurance", "casualty",
9 "surety", "mutual", or any other word that is descriptive of the insurance, casualty, or surety
10 business or that is deceptively similar to the name or description of any insurance or surety
11 corporation or any other vehicle protection product warrantor. A warrantor may use the term
12 "guaranty" or a similar word in the warrantor's name. A warrantor or its representative shall not in
13 its vehicle protection product warranties or literature make, permit, or cause to be made any false
14 or misleading statement, or deliberately omit any material statement that would be considered
15 misleading if omitted, in connection with the sale, offer to sell, or advertisement of a vehicle
16 protection product warranty.

17 2. A vehicle protection product seller or warrantor may not require as a condition of
18 financing that a retail purchaser of a motor vehicle purchase a vehicle protection product.

19 385.427. 1. All vehicle protection product warrantors shall keep accurate accounts,
20 books, and records concerning transactions regulated under sections 385.400 to 385.436.

21 2. A vehicle protection product warrantor's accounts, books, and records shall include:

22 (1) Copies of all vehicle protection product warranties;

23 (2) The name and address of each warranty holder; and

24 (3) Claims files which shall contain at least the dates, amounts, and descriptions of all
25 receipts, claims, and expenditures.

26 3. A vehicle protection product warrantor shall retain all required accounts, books, and
27 records pertaining to each warranty holder for at least three years after the specified period of
28 coverage has expired. A warrantor discontinuing business in the state shall maintain its records
29 until it furnishes the director satisfactory proof that it has discharged all obligations to warranty

Action Taken _____

Date _____

holders in this state.

4. Vehicle protection product warrantors shall make all accounts, books, and records concerning transactions regulated under sections 385.400 to 385.436 available to the director for examination.

385.430. 1. The director may conduct examinations of warrantors, administrators, or other persons to enforce sections 385.400 to 385.436 and protect warranty holders in this state. Upon request of the director, a warrantor shall make available to the director all accounts, books, and records concerning vehicle protection products provided by the warrantor that are necessary to enable the director to reasonably determine compliance or noncompliance with sections 385.400 to 385.436.

2. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice, or course of business constituting a violation of sections 385.400 to 385.436 or a rule adopted or order issued pursuant thereto, or a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 385.400 to 385.436 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of these sections is a level two violation under section 374.049, RSMo.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice, or course of business constituting a violation of sections 385.400 to 385.436 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 385.400 to 385.436 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of these sections is a level two violation under section 374.049, RSMo.

385.433. The director may promulgate rules and regulations to implement the provisions of sections 385.400 to 385.436. Such rules and regulations shall include disclosures for the benefit of the warranty holder, record keeping, and procedures for public complaints. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to

Action Taken _____

Date _____

1 all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
2 section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general
3 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove
4 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
5 any rule proposed or adopted after January 1, 2009, shall be invalid and void.

6 385.436. Sections 385.400 to 385.436 applies to all vehicle protection products sold or
7 offered for sale on or after January 1, 2009. The failure of any person to comply with sections
8 385.400 to 385.436 prior to January 1, 2009, shall not be admissible in any court proceeding,
9 administrative proceeding, arbitration, or alternative dispute resolution proceeding and may not
10 otherwise be used to prove that the action of any person or the affected vehicle protection product
11 was unlawful or otherwise improper. The adoption of sections 385.400 to 385.436 does not imply
12 that a vehicle protection product warranty was insurance prior to January 1, 2009. The penalty
13 provision of sections 385.400 to 385.436 do not apply to any violation of sections 385.400 to
14 385.436 relating to or in connection with the sale or failure to disclose in a retail installment
15 contract or lease, or contract or agreement that provides for payments under a vehicle protection
16 product warranty so long as the sale of such product, contract, or agreement was otherwise
17 disclosed to the purchaser in writing at the time of the purchase or lease."; and

18 Further amend said title, enacting clause and intersectional references accordingly.
19

Action Taken _____

Date _____